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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/988,340	11/19/2001	Henry E. Agbaje	MTC6802 (39-21 (53156A))	8785
321	7590	09/22/2004	EXAMINER CLARDY, S	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			ART UNIT 1616	PAPER NUMBER

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/988,340

Applicant(s)

AGBAJE ET AL.

Examiner

S. Mark Clardy

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-8, 10, 12-40, 42-47 and 51-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-8, 10, 12-40, 42-47, 51-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

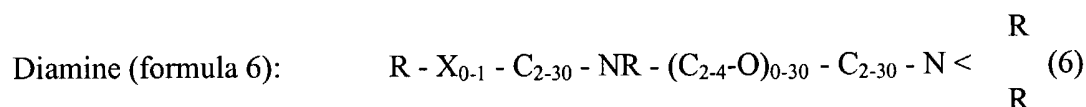
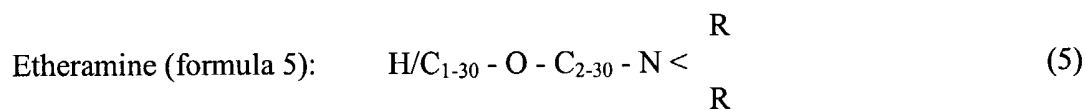
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Claims 3-8, 10, 12-40, 42-47, 49, and 51-55 are pending in this application for which a Request for Continued Examination (RCE) has been filed; this application was a continuation-in-part of SN 09/926,521, which was filed under 35 USC 371 as the national stage application of PCT/US01/16550, filed May 21, 2001, which claims the benefit under 35 USC 119(e) of US Provisional Applications No. 60/206,628 (May 24, 2000), 60/205,524 (May 19, 2000), 60/273,234 (March 2, 2001), and 60/274,368 (March 8, 2001).

Examination prior to the RCE had been conducted based on the election (June 30, 2003) of the invention of Group I, drawn to a dual component surfactant compositions, and the species comprising the etheramine of formula (5) and the diamine of formula (6). The elected invention was rejected under 35 USC 102 and 103. The remaining pesticidal/herbicidal claims had been held withdrawn from consideration as being drawn to a nonelected invention.

Applicants have now cancelled the claims drawn to the surfactant compositions, and requested to elect the invention of the pesticidal compositions/methods (i.e., original Groups II-IV), and the following species. The shift in election is acceptable.

Glyphosate



wherein: each R group above may be -H, -C₁₋₃₀, or -(C₂₋₄-O)₁₋₅₀ - H/C₁₋₄; and

X is -O-, -N(C₂₋₄)-, -CO-, -COO-, -OCO-, -N(H/C)-CO-, -CONR-, -S-, -SO-, -SO₂-.

All claims have been examined, but only insofar as they read on the elected species.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-8, 10, 12-40, 42-47, 49, and 51-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Stridde et al (US 6,420,311), Griffiths et al (US 6,248,695), Forbes et al (US 5,668,085), and Wright et al (US 5,750,468).

Stridde et al teach the utility of alkoxyated polyether diamines wherein the amino groups are separated by a polyether chain. The surfactants are useful for enhancing glyphosate toxicity (columns 1-4).

Griffiths et al teach the utility of formulating glyphosate with polyalkoxylated alkylenediamines, i.e., wherein the amino groups are separated by a C₁₋₆ alkylene chain (columns 2-3). These surfactants are less hazardous than the more typically used ethoxylated tallowamine surfactants (col 1, lines 43-47).

Forbes et al teach the utility of formulating glyphosate with alkoxyated alkylamine surfactants (columns 2-3), optionally in combination with additional conventional components and surfactants (columns 7-8).

Wright et al teach the utility of polyalkoxylated etheramine surfactants in making glyphosate formulations. The surfactants may be in the form of amines, amine oxides, or quaternary ammonium compounds (columns 1-8).

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Each of these references teach that glyphosate may be used in its various conventional salt or ester forms.

One of ordinary skill in the art would be motivated to combine the teachings of these patents because they disclose the activity enhancing effects of adding amine surfactants to glyphosate compositions.

Thus, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have combined etheramine and diamine surfactants in glyphosate compositions in order to take advantage of the characteristics provided by the two separate components. Determination of specific ratios of components is within the skill level of the ordinary artisan, as is the selection of the specific form of glyphosate (ester, IPA salt, K salt, etc.); absent evidence of criticality, the selection of these ratios and components are seen as obvious.

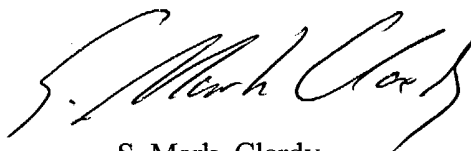
This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is 571-272-0611. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "S. Mark Clardy", is positioned above the printed name.

S. Mark Clardy
Primary Examiner
Art Unit 1616

September 17, 2004